[FR Doc. 95–23163 Filed 9–15–95; 8:45 am]
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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1066–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1066–DR), dated September 1, 1995, and related determinations.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated September 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 1, 1995:

The Counties of Canadian, Greer, and Harmon for Public Assistance, and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig S. Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 95–23088 Filed 9–15–95; 8:45 am]
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FEDERAL MARITIME COMMISSION

Inquiry Into Port Restrictions and Requirements in the United States/ Japan Trade

September 12, 1995.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is collecting information regarding certain restrictions and requirements for the use of port and terminal facilities in Japan, to determine whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is collecting information regarding (1) The ''prior consultation'' system, a process of mandatory discussions and operational approvals for port usage; (2) mandatory weighing and measuring requirements; (3) restrictions on Sunday work; and (4) the disposition of the Japanese Harbor Management Fund.

DATES: Comments may be submitted on or before November 17, 1995.

ADDRESSES: Send submissions to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (''Commission'') is collecting information about certain restrictions and requirements for the use of port and terminal facilities in Japan, to assess whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is specifically concerned with: (1) The effects of the ''prior consultation'' system, a process of mandatory discussions and operational approvals involving Japanese port and terminal management, shoreside labor unions, and containership operators; (2) the requirement that all containerized cargo exported from Japan be weighed and measured, apparently without regard for commercial necessity; (3) restrictions on the operation of Japanese ports on Sunday; and (4) the disposition of the Japan Harbor Management Fund.

Prior Consultation

The prior consultation system in Japan is administered and controlled by the Japan Harbor Transportation Association (''JHTA''), an association of companies providing harbor transportation services, including terminal operators, stevedores, and sworn measures. Under this system, carriers serving Japan must consult with JHTA about any operational matters involving Japanese ports or harbor labor. Such matters appear to include, inter alia, inauguration of new services, rationalization agreements between carriers which involve vessel sharing or berthing changes, changes in stevedoring contractors, technological or equipment changes, weighing and measuring, and Sunday work. Prior consultation also appears to be required for minor matters, such as change of vessel name or route, or substitution of vessels. After it consults with a shipowner, JHTA may conduct consultations with labor interests, then approve or deny the shipowner's request.

This system of consultations—between JHTA and carriers on the one hand, and JHTA and unions on the other—originated in the 1960's, as a means for resolving labor disputes arising out of the introduction of containerization. Over time, however, prior consultation requirements have been extended to even minor matters, such as vessel substitution, which do not appear to involve potential labor relations issues. While its scope has increased, the prior consultation system itself has remained characterized by a lack of transparency. The process is said to lack written records, clear written bases for decisions, and appeal rights, and to include a system of closed ''pre-prior consultation'' meetings to determine which user requests will be accepted for prior consultation.

Because of its broad discretion to review and disapprove virtually all aspects of shipowners' harbor operations, JHTA appears to have amassed an exceptional level of control over the market for terminal operations and services in Japan. In particular, it appears that shipowners have no free choice of terminal operators and stevedores; instead, JHTA assigns operators to carriers, virtually eliminating competition in this area. Circumvention of JHTA in dealings with individual operators is generally viewed to be impossible, as it could lead to disapproval of shipowner plans and disruption of cargo handling labor.

It appears that the prior consultation requirement and the attendant lack of competition in the harbor services market has had a number of adverse effects on carriers serving Japan. These include increased port charges and costs, inefficiency, and inflexibility. Among other things, the prior consultation requirement may impede the ability of shipowners, both individually and in vessel sharing consortia, to reduce costs by rationalizing port operations and dealing with operators of their choice.

Mandatory Weighing and Measuring

Currently, it appears that all containerized cargo exported from Japan is required to be weighed and measured by one of two sworn measuring associations, Nippon Kaiji Kentei Kyokai and Shin Nihon Kentei Kyokai, both of which appear to be members of JHTA. This policy is set forth in a 1980

memorandum between JHTA and the Japan Council of Port and Harbor Transport Workers' Unions. Rates for weighing and measuring services are filed with, and approved by, the Japanese Ministry of Transport (''MOT'').

There is no clear justification for the policy of mandatory weighing and measuring of cargo. Internationally applied liability conventions do not require carriers to weigh and measure cargo, as carriers may accept shipper-provided weights and measurements. Furthermore, in many instances physical weighing and measuring of cargo may not even take place; instead, measurers' figures may be derived from samples or statistical information.

It appears that mandatory weighing and measuring was implemented to provide constant work for sworn measures, as the industry shifted toward the use of containers and box-rated cargo. However, the justification for continuing this practice indefinitely is unclear, given that many harbor workers have retired or left the ports since the introduction of containerization in Japan's trades over two decades ago. Also, it appears that the measuring companies have recently increased weighing and measuring charges—with MOT approval—based in part on a need to attract *new* labor to perform these services.

Sunday Work

In recent years, the performance of harbor work on Sundays in Japanese ports has been either severely restricted or prevented altogether, causing inefficiency and disruption for both carriers and shippers. Recent press reports have indicated a provisional easing of restrictions on Sunday work; however, the extent of that progress is not clear.

Prior to 1988, work was not performed on Sundays at Japanese ports. In 1988, a policy of limited Sunday work was put in place; carriers wishing services on Sunday were allowed to seek prior consultation and approval from JHTA. However, Sunday work was discontinued entirely in 1991. It appears that Sunday work was halted as a result of an ongoing dispute involving JHTA and the two large harbor labor organizations, the National Council of Dockworkers' Unions of Japan and the Japanese Confederation of Port and Transport Workers' Unions, regarding compliance with a 1991 labor agreement.

The restriction of Sunday work has been a matter of longstanding concern for the United States Government, and has been raised in bilateral maritime discussions with Japanese officials. In September 1992 Maritime Administrator Warren G. Leback indicated that the Sunday work practices caused serious problems for U.S. carriers, and affected ship scheduling throughout the Pacific Basin.

It has recently been reported that an ''Agreement on Exceptional Measures for the No-Cargo-Handling-on-Sundays System'' was concluded by JHTA, representing harbor management, and the labor groups, the Japan Council of Port and Harbor Transport Workers' Unions and the Japanese Confederation of Port and Transport Workers' Unions. This agreement, effective June 11, 1995, calls for the implementation of Sunday cargo handling at Japan's six major ports: Tokyo, Yokohama, Nagoya, Osaka, Kobe, and Kitakyushu. The agreement is said to be ''provisional'' in nature, and is effective for one year only.

The agreement is reported to contain several conditions for the provision of Sunday work. Sunday work is limited to terminals which conform to the ''5–9 Accord'' labor agreement (signed May 9, 1991) which guarantees, among other things, a 5-day work week, 8-hour days, limits on overtime, and certain numbers of Saturdays, Sundays, and holidays off. Only carriers who have paid all MOT-approved port charges will be eligible. Cargo will be moved only between vessels and containeryards; no cargo will be accepted at the yard or delivered on Sunday.

It appears that Sunday work will be from 8:30 a.m. to 4:30 p.m. only. Extra wages will be determined regionally, and carriers and harbor transportation firms will be required to apply for Sunday work through the district harbor transportation associations by noon on Fridays. The trade press has reported that fees for Sunday cargo handling will be 60 percent higher than ordinary fees.

Despite these positive steps, a number of concerns regarding Sunday work remain. We are uncertain of the extent to which the agreement has been implemented, as well as the effects of remaining restrictions and increased fees applicable to Sunday work. Also, the outlook for a long-term solution to the Sunday work issue is unclear, given the one-year ''provisional'' nature of the recent agreement.

Harbor Management Fund

In Docket No. 91–19, *Actions to Address Conditions Affecting U.S. Carriers Which do not Exist for Foreign Carriers in the U.S./Japan Trade,* the Commission launched an investigation into a fund, known as the ''Harbor Management Fund,'' collected by JHTA from ocean carriers. In particular, the Commission examined whether JHTA, with the support of MOT, coerced payments from carriers into the fund by threatening labor instability and unavailability. It was alleged that the fund was to be used for import distribution centers or other projects from which U.S. carriers would receive no economic benefits.

Docket No. 91–19 was discontinued on June 13, 1991, based on an agreement between JHTA and participating carriers. It was agreed that collections from carriers for the fund would be discontinued after March 31, 1992, and similar assurances were provided by the Government of Japan Minister of Transport to American President Lines. Also, JHTA committed to use the fund proceeds only for harbor labor-related purposes, to ensure that benefits would accrue to all carriers contributing to the fund.

While collections for the fund were stopped in 1992 as agreed, it appears that the commitment to use remaining proceeds for labor-related purposes has not been satisfied. When Docket No. 91–19 was discontinued, the Commission directed Japanese carrier parties to file quarterly reports on the status of the fund. The last of these reports, filed May 31, 1994, showed that only nominal amounts had been expended from the fund since 1992. Fund activity for the past year, as well as JHTA's plans for disposition of the fund monies, remain unclear.

Government Supervision of Port Transportation Services

While port services in Japan are generally provided by private companies, the Government of Japan may exercise substantial regulatory control and oversight over these operators. For example, under the Japanese Port Transportation Business Law, persons wishing to provide port transportation services must apply for a certificate from MOT. In deciding whether to grant such a certificate, MOT evaluates, inter alia, whether the business in question ''has an appropriate plan to perform the business,'' and whether it would ''cause port transportation supply to be excessively over transportation demand.'' Art. 5 & 6. It appears that restrictive use of this licensing authority by MOT may effectively prevent new operators from entering terminals to compete with existing JHTA members, and to prevent non-Japanese flag lines from establishing their own terminal operations in Japan.

MOT also has broad statutory authority to correct restrictive or unfair

harbor practices. Rates charged by port transportation businesses must be approved by MOT, which determines whether the rates are reasonable and non-discriminatory. Art. 9. MOT must approve operators' ''terms and conditions on port transportation,'' to determine that ''there is no fear that the terms and conditions may impede the benefits of users,'' and also approve any changes in operators' business plans. Art. 11 & 17. If MOT determines that the port transportation businesses ''impeded benefits of users'' it may order changes in business plans, terms and conditions, or rates. Art. 21.

JHTA itself operates with the permission of, and under the supervision of, MOT. JHTA was incorporated in 1965 as a ''juristic person'' under Article 34 of the Civil Code of Japan, which provides that public interest, not-for-profit organizations may be incorporated subject to the permission of ''competent authorities.'' As the competent authority, MOT may, inter alia, annul its incorporation if JHTA violates MOT orders or acts in contravention of the public interest.[1]

In addition, it appears that the Japanese Fair Trade Commission (''FTC''), which administers the Antimonopoly Law, exercises some authority over JHTA. It was reported in the press that, in the 1970's and 1980's, the FTC warned JHTA that the prior consultation system might be in violation of the Antimonopoly Law of Japan. Because of these concerns, the JHTA announced in 1985 the abolishment of the prior consultation system. However, it appears that the prior consultation system was reestablished in 1986, with the conclusion of an agreement between JHTA and an organization of Japanese carriers. The terms of that agreement expressly state that it was concluded ''under the guidance of the Ministry of Transport,'' and the agreement was signed, as a witness, by an MOT official.

Antimonopoly concerns resurfaced in 1990, when four stevedoring companies in Tokyo and Yokohama filed a complaint with the FTC, claiming that JHTA and prior consultation had incapacitated their businesses. While the resolution of these complaints is not clear, it has been reported in the press that in 1993 MOT advised JHTA to take remedial action to ensure that the prior consultation system is administered in a fair manner. Also, in 1994, the FTC released a report calling for a review of the existing licensing system and for substantial deregulation of the harbor transportation system.

Discussion

The Commission is statutorily charged with addressing restrictive or unfair foreign practices in the maritime services area. Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes the Commission, *inter alia:*

> To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * including intermodal movements, terminal operations, * * * and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; * * *.

Also, the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a (''FSPA''), authorizes the Commission to

> Investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—
>
> (1) Adversely affect the operations of United States carriers in the United States oceanborne trade; and
>
> (2) Do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

Under the FSPA, if the Commission determines that such adverse conditions exist, it may ''take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions.'' Such action may include limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

The Commission has serious concerns that prior consultation, mandatory weighing and measuring, and restrictions on Sunday work may create conditions unfavorable to shipping in the U.S. trade with Japan, or conditions which adversely affect the operations of U.S. carriers in Japan that do not exist for foreign carriers in the United States. In addition to subjecting carriers to potentially high costs and charges, such restrictions may prevent carriers from pursuing efficiency through the rationalization of harbor operations, thereby disadvantaging importers, exporters, and carriers in the U.S.-Japan trades. The Commission is further concerned that commitments regarding disposition of the Harbor Management Fund, made upon the discontinuation of Docket No. 91–19, may not be fully satisfied.

While these matters are largely administered by JHTA and private terminal operators, they appear to be implemented with the approval and cooperation of the Government of Japan. Such support may include the protection of JHTA operators from competition by MOT's restrictive use of licensing authority, the approval of charges for unnecessary mandatory weighing and measuring, and the failure of the Government of Japan to use its substantial regulatory and oversight authority to prevent JHTA from abusing its effective control over harbor operations and the prior consultation system.

Therefore, by this Notice, the Commission is inviting all interested parties to file information, views, and comments with respect to prior consultation, mandatory weighting and measuring, Sunday work, and the Harbor Management Fund, and their effects on the oceanborne carriage of goods between the United States and Japan. Confidential or sensitive information and documents submitted pursuant to this Order shall, upon request of the responding parties, be treated confidentially to the full extent permitted by law; provided, however, that such confidential treatment shall not foreclose use by the Commission of such information in any subsequent formal proceeding.

Also, by separate Orders issued pursuant to Section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(6), and section 10002(d) of the Foreign Shipping Practices Act, 46 U.S.C. app. § 1710a(d), the Commission is requiring ocean common carriers in the U.S./Japan trades to provide information on these matters. It is expected that the information received in response to this Notice and the corresponding Orders will allow for a full consideration of these matters, and will enable the Commission to determine whether further action in this area is warranted.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–23052 Filed 9–15–95; 8:45 am]

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[1] *See* Regulations Regarding the Incorporation and Supervision of Juristic Persons Belonging to the Jurisdiction of the Minister of Transport, Ministry of Transport Regulations No. 22 (1969), Art. 11.